opportunity in order to entitle the party to insist on it. *Pittsburg, etc., R. Co. v. Stowe Tp., supra; Miller* v. *Rowan*, 251 Ill. 344, 96 N. E. 285 (1911). Generally the objection comes too late when made for the first time at the hearing. *Sears* v. *Scranton Trust Co.*, 228 Pa. 126, 77 Atl. 423, 20 Ann. Cas. 1145 (1910). The objection must be insisted upon in the court below, and cannot be made for the first time on appeal. *Louisville, etc., R. Co.* v. *F. W. Cook Brewing Co.*, 223 U. S. 70 (1911). A defendant who seeks affirmative equitable relief by filing a cross-bill alleging new facts is precluded from subsequently objecting to equity jurisdiction. *Original Consol. Mining Co.* v. *Abbott*, 167 Fed. 681 (1908).

The instant case is one in which the subject-matter is subject to the concurrent jurisdiction of law and equity, and one in which the defendant sought affirmative relief in equity; hence, the court rightly held the objection to equity jurisdiction waived. Such holding is eminently reasonable, for the objection ought to be taken in the earliest stages of the suit, before costs have accumulated, or by lapse of time irreparable injury may result, by remitting the complainant to a legal remedy which has in fact become unavailing. See *Tubb* v. *Fort*, 58 Ala. 277.

On the other hand, those cases holding that where the cause is wholly without the field of equitable cognizance, the objection to equity jurisdiction cannot be waived, are certainly sound. Consent may waive errors, but it can never confer jurisdiction. The jurisdiction of a court is defined by the law which created the court, and no consent of parties can add to or take from it.

MUNICIPAL CORPORATIONS—OBSTRUCTION OF SIDEWALK WITH BUILDING MATERIALS FOR PRIVATE CONSTRUCTION—LIABILITY OF CITY FOR INJURY OF PEDESTRIAN.—The defendant city permitted an owner of premises abutting one of its sidewalks to completely obstruct, with building material, the sidewalk and about one-half of the street. The traffic on this part of the street was heavy and the defendants knew that it was customary to run automobiles along this street at a very high rate of speed. The plaintiff was lawfully walking along this street and finding the sidewalk obstructed, was compelled to go out into the street to pass around the obstruction. While thus in the street, the plaintiff was struck and injured by an automobile. The plaintiff brought an action for damages against the city. *Held*, the plaintiff could recover. *Shafir* v. *Sieben* (Mo.), 233 S. W. 419 (1921).

A municipal corporation is not liable for damages resulting from the exercise, or non-exercise, of its governmental functions. *Jones* v. *City of Williamsburg*, 97 Va. 722, 34 S. E. 883, 47 L. R. A. 294 (1900). For liability of a municipal corporation for the acts of its agents in the exercise of a governmental function see 7 VA. LAW REV. 383, and authorities there cited; see also Article, 1 VA. LAW REV. 497. For authorities distinguishing between the liability of a city for the physical condition of its streets and the use to be made of its streets see 4 VA. LAW REV. 592. Also see 4 VA. LAW REV. 414. And for the liability of a municipal corporation in general see Note, 20 L. R. A. (N. S.) 512, *et seq.*

Coming to the strict rule of implied liability for the unsafe or defec-

tive condition of the streets of a municipal corporation, the cases appear to be fairly uniform in the application of the law. The city is liable where the plaintiff is injured by a defective sidewalk, which the city was bound to repair. *Colby* v. *City of Beaver Dam*, 34 Wis. 285 (1874); *City of Chicago* v. *Keefe*, 114 Ill. 222, 2 N. E. 267, 55 Am. Rep. 860 (1885). And the city is bound to keep its streets free from dangerous obstructions. Thus, the city is liable where an abutting owner leaves a counter inclined against a building on the sidewalk, and after about five days, children playing around the counter cause it to fall and kill a child. *Kunz* v. *City of Troy*, 16 N. Y. St. Rep. 459, 1 N. Y. Supp. 596 (1888). The city is liable where it allows a temporary platform to be erected in the street for a show and a person is injured thereby. *City of Richmond* v. *Smith*, 101 Va. 161, 43 S. E. 345 (1903). The city is liable where a billboard is left on the sidewalk for some time and the wind blows it over, injuring a pedestrian. *Cason* v. *City of Ottumwa*, 102 Iowa 99, 71 N. W. 192 (1897). And where injuries occur to travellers from boxes left on the street during a day and night the city is liable. *Mayor of Birmingham* v. *Tayloe*, 105 Ala. 170, 16 So. 576 (1894); *City of Galesburg* v. *Higley*, 61 Ill. 287 (1871). The city is held to the same liability where it permits building materials to be placed on its sidewalks or streets for private construction, without proper warning of the obstruction to travellers. *Blocher* v. *Dieco*, 30 Ky. L. Rep. 689, 99 S. W. 606 (1907); *City of La Porte* v. *Henry*, 41 Ind. App. 197, 83 N. E. 655 (1908); *Apker* v. *City of Hoquiam*, 51 Wash. 567, 99 Pac. 746 (1909).

The city must, however, have notice of the defective or unsate condition of its streets or sidewalks before it can be held liable for accidents occurring thereon; but notice may be constructive, as well as actual, depending upon the peculiar circumstances of each case. When the obstruction has been on the street so long that notice may be reasonably inferred, or is one which by reasonable care should have been ascertained and remedied, the city is liable. *Evansville* v. *Senhenn*, 151 Ind. 42, 47 N. E. 634, 51 N. E. 88, 41 L. R. A. 728, 68 Am. St. Rep. 218 (1898); *Kunz* v. *City of Troy*, *supra*; *Union Street R. Co.* v. *Stone*, 54 Kan. 83, 37 Pac. 1012 (1894); *District of Columbia* v. *Woodbury*, 136 U. S. 450 (1890).

And a city, while bound to use a reasonable degree of skill and diligence in making its streets safe and convenient for the public travel, is not an insurer as to the safety of travellers upon its streets. *Ring* v. *City of Cohoes*, 77 N. Y. 83, 33 Am. Rep. 574 (1879); *City of Ludlow* v. *De Vinney*, 185 Ky. 316, 215 S. W. 45 (1919); *City of Richmond* v. *Rose*, 127 Va. 772, 102 S. E. 561 (1920).

The principal case appears to be in line with the great weight of authority in this country.

PRINCIPAL AND SURETY—CONTRIBUTION BETWEEN CO-SURETIES—RECOGNIZED IN COURTS OF LAW.—The plaintiff bound himself jointly and severally with the defendant and the defendant's son as surety for a loan by a bank to the defendant's lumber company. The company became bankrupt and the son insolvent. The bank then brought action against the plaintiff for the full amount of the loan in satisfaction of which plain-